

PRODUCT LABELING UNDER THE TOXIC SUBSTANCES CONTROL ACT (TSCA)

Introduction

The Toxic Substances Control Act (TSCA) was enacted by Congress in the fall of 1976 to identify and control toxic chemical hazards to human health and the environment. “To prevent unreasonable risks,” the Act gives EPA the authority to “select from a broad range of control actions under TSCA, from requiring hazard-warning labels to outright bans on the manufacture or use of especially hazardous chemicals.” (EPA, 1987)

Program Summary

EPA is authorized to require labeling both for existing chemicals appearing on the TSCA Inventory and for new chemicals. For existing chemicals,

Section 6(a)3 of TSCA allows the Administrator to apply:

a requirement that such substance or mixture or any article containing such substance or mixture be marked with or accompanied by clear and adequate warnings and instructions with respect to its use, distribution in commerce, or disposal or with respect to any combination of such activities. The form and content of such warnings and instructions shall be prescribed by the Administrator. (PL 94-469)

The law does not specify the form or content of the warnings, and EPA has not promulgated any regulations establishing a single consistent method of labeling. To date, labels have been required or proposed for chemicals and products on a case-by-case basis. To date, regulated chemicals and products subject to TSCA Section 6 labeling include PCBs, asbestos, hexavalent chromium and acrylamide grout.

Under TSCA Section 5(e), EPA requires labeling for some new chemicals that “may present an unreasonable risk of injury to health or the environment” using its authority “to prohibit or limit the manufacture, processing, distribution in commerce, use or disposal” of such substances.

Generic labeling provisions listed in 40 CFR §721.72(b), (g), and (h) are applied to significant new uses of specific chemicals on a case-by-case basis. Companies may be required to provide labeling for containers distributed in commerce, for containers used in the workplace by employees, or both. When labeling is required for containers distributed in commerce, labels must include:

- a) The commonly recognized identity of the substance
- b) A statement of health hazard(s) and precautionary measure(s), if any
- c) A statement of environmental hazard(s) and precautionary measure(s), if any
- d) A statement of exposure and precautionary measure(s), if any, and

- e) The name and address of a source of additional information about hazard evaluation and emergency procedures.

Additionally, labels for containers distributed in commerce must not conflict with the requirements of the Hazardous Materials Transportation Act and the regulations issued under it. Labeling requirements imposed under TSCA Section 5 seldom affect consumers because the regulated substances are mainly distributed between manufacturers and processors and are only rarely used in consumer products.

40 CFR §721.72 contains slightly different labeling requirements for workplace uses of new chemicals. Companies may provide signs or other written material in lieu of container labels in the workplace. There is no requirement to include the name and address of a contact for further information for workplace labels. Portable containers used to transfer a new chemical from a labeled container for an employee's immediate use need not be labeled. Existing labels on incoming containers must not be removed or defaced unless they are immediately relabeled with the required information.

In addition to the specific labeling requirements applied under TSCA Section 5(e), TSCA Section 5(f) allows EPA to apply Section 6's labeling provisions to new chemicals as well as existing ones.

Examples of TSCA Labels

Polychlorinated biphenyls (PCBs) were regulated under TSCA in 1978. The labeling section of this rule required one of two labels to be used, a "Large PCB Mark" or a "Small PCB Mark." The large label states:

"Caution: Contains PCBs, a toxic environmental contaminant requiring special handling and disposal in accordance with US EPA regulations 40 CFR 761. For disposal information contact the nearest EPA office. In case of accident or spill, call toll free the US Coast Guard National Response Center." The small label states, *"Caution: Contains PCBs. For proper disposal contact US EPA."*

The labeling of asbestos was required in 1989 as part of regulatory actions that included a ban on "almost all products" containing asbestos. Consumer products containing asbestos include clutch parts and brake shoes for cars and trucks, pipeline wrap and vinyl asbestos floor tile. The labeling aspect of the rule is intended "to facilitate compliance with and enforcement of the rule." The required label stated:

"Notice: This product contains asbestos. The EPA has banned the distribution in US commerce of this product under section 6 of TSCA (15 USC. 2605) as of [date, ranging from August 1990 to August 1995]. Distribution of this product in commerce after this date and intentionally removing or tampering with this label are violations of Federal law." (54 FR 29460)

Hexavalent chromium-based water treatment chemicals used in HVAC and refrigeration systems were regulated under TSCA in 1990. (55 FR 221) The warning label reads:

“Warning: This product contains hexavalent chromium. Inhalation of hexavalent chromium air emissions increases the risk of lung cancer. Federal law prohibits use of this substance in comfort cooling towers, which are towers that are open water recirculation devices and that are dedicated exclusively to, and are an integral part of, heating, ventilation and air conditioning or refrigeration systems.”

EPA has proposed a ban on acrylamide and N-methylolacrylamide (NMA) grouts, which are used to make repairs to leaking cement structures such as sewers and manholes, but also to dams and basins, and to stop water flow in mines, reservoirs and hazardous waste sites. The ban would prohibit all use of acrylamide grout and would allow NMA to be used only for sewer repair for three years, subsequently banning it. EPA proposed labeling of containers of such grout 15 days after the effective date of the rule. “EPA believes there is a strong need for labeling to ensure compliance with the prohibitions on the manufacture, importation, distribution and use of acrylamide and NMA grouts. Labeling is a necessary mechanism to direct users toward compliance with the prohibitions on uses of acrylamide and NMA grouts.” (56 FR 49871) No wording for the label warning has been suggested.

40 CFR §721 subpart E defines significant new uses for many specific chemicals. Manufacturers, importers, or processors of these chemicals are required to notify EPA when they intend to engage in a significant new use of the listed substance. Failure to comply with labeling requirements specified in subpart E constitutes a significant new use. For 2-Chloro-N-methyl-N-substituted acetamide, the first chemical listed in 40 CFR §721 subpart E, companies are required to label only containers distributed in commerce. The following specific hazard and precautionary statements are required for 2-Chloro-N-methyl-N-substituted acetamide: “This substance may cause internal organ effects,” “When using this substance avoid skin contact,” and, “When using this substance use skin protection.”

40 CFR §721 subpart E prescribes more extensive labeling provisions for halogenated phenyl alkane. For this substance, companies are subject to all of the §721.72 requirements for workplace labeling and for the labeling of containers distributed in commerce. In addition, labels must be legible, prominently displayed, and in English. The information they contain may also be repeated in other languages. Specific hazard and precautionary statements required for halogenated phenyl alkane include: “This substance may cause cancer,” “When using this substance use respiratory protection,” “When using this substance use skin protection,” “This substance may be toxic to aquatic organisms,” and, “Notice to users: do not release to water,” Each of these statements must be followed by “See MSDS for details.” 40 CFR §721 subpart E’s requirements do not apply once halogenated phenyl alkane has been incorporated into a resin.

References

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US EPA, Office of Toxic Substances, 1987. *The Layman's Guide to the Toxic Substances Control Act*, EPA 560/1-87-011, June.

US EPA, Office of Toxic Substances, 1989. "Asbestos; Manufacture, Importation, Processing and Distribution in Commerce Prohibitions," *Federal Register*, 54 FR 29460, July 12.

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US EPA, Office of Toxic Substances, 1991. "Proposed Ban on Acrylamide and N-Methylolacrylamide Grouts," *Federal Register*, 56 FR 49863, October 2.